

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

385B0443

HOUSE BILL NO. 1201

Introduced by: Representatives Windhorst, Fitzgerald, Jaspers, Koskan, and Smidt and Senator Aker

1 FOR AN ACT ENTITLED, An Act to reduce the penalties for certain violations of revenue
2 statutes not involving fraud.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-39-52 be amended to read as follows:

5 10-39-52. A person who intentionally makes or files, under oath, a statement required by this
6 chapter which is false, is guilty of a ~~Class 6 felony~~ Class 1 misdemeanor. The market value of all
7 precious metals on which the person makes a false statement shall be forfeited to the State of
8 South Dakota.

9 Section 2. That § 10-45-48.1 be amended to read as follows:

10 10-45-48.1. Any person who:

- 11 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
12 by this chapter is guilty of a Class 6 felony;
- 13 (2) Fails to pay tax due under this chapter within thirty days from the date the tax
14 becomes due is guilty of a Class 1 misdemeanor;
- 15 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these

1 records to the secretary of revenue or his agents for the purpose of examination is
2 guilty of a Class 1 misdemeanor;

3 (4) Fails to file a return required by this chapter within thirty days from the date the return
4 is due is guilty of a Class 1 misdemeanor;

5 (5) Engages in business as a retailer under this chapter without obtaining a sales tax
6 license is guilty of a Class 1 misdemeanor;

7 (6) Engages in business as a retailer under this chapter after ~~his~~ the licensee's sales tax
8 license has been revoked by the secretary of revenue is guilty of a ~~Class 6 felony~~ Class
9 1 misdemeanor;

10 (7) Willfully violates any rule of the secretary of revenue for the administration and
11 enforcement of the provisions of this chapter is guilty of a Class 1 misdemeanor;

12 (8) ~~Violates either subdivision (2) or subdivision (4) two or more times in any~~
13 ~~twelve-month period is guilty of a Class 6 felony;~~

14 (9) Engages in business as a retailer under this chapter without obtaining a sales tax
15 license after having been notified in writing by the secretary of revenue that the person
16 is a retailer subject to the provisions of the sales and use tax laws is guilty of a ~~Class~~
17 ~~6 felony~~ Class 1 misdemeanor. It is not a violation of this subdivision if the person
18 engaging in business as a retailer files an application for a sales tax license and meets
19 all lawful prerequisites for obtaining such license within three days from receipt of
20 written notice from the secretary.

21 For purposes of this section "person" includes corporate officers having control, supervision
22 of or charged with the responsibility for making tax returns or payments pursuant to § 10-45-55.

23 Section 3. That § 10-46A-13.1 be amended to read as follows:

24 10-46A-13.1. Any person who:

25 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed

1 by this chapter is guilty of a Class 6 felony;

2 (2) Fails to pay tax due under this chapter within thirty days from the date the tax
3 becomes due is guilty of a Class 1 misdemeanor;

4 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
5 records to the secretary of revenue or his agents for the purpose of examination is
6 guilty of a Class 1 misdemeanor;

7 (4) Fails to file a return required by this chapter within thirty days from the date the return
8 is due is guilty of a Class 1 misdemeanor;

9 (5) Engages in business under this chapter without obtaining a contractor's excise tax
10 license is guilty of a Class 1 misdemeanor;

11 (6) Engages in business under this chapter after ~~his~~ the licensee's contractor's excise tax
12 license has been revoked by the secretary of revenue is guilty of a ~~Class 6 felony~~ Class
13 1 misdemeanor;

14 (7) ~~Violates either subdivision (2) or subdivision (4) of this section two or more times in~~
15 ~~any twelve-month period is guilty of a Class 6 felony;~~

16 (8) Engages in business under this chapter without obtaining a contractor's excise tax
17 license after having been notified in writing by the secretary of revenue that the person
18 is a contractor subject to the provisions of the contractors' excise tax laws is guilty of
19 a ~~Class 6 felony~~ Class 1 misdemeanor. It is not a violation of this subdivision if the
20 person engaging in business files an application for a contractor's excise tax license
21 and meets all lawful prerequisites for obtaining such license within three days from
22 receipt of written notice from the secretary.

23 For purposes of this section "person" includes corporate officers having control, supervision
24 of or charged with the responsibility for making tax returns or payments pursuant to
25 § 10-46A-13.

Section 4. That § 10-46B-11.1 be amended to read as follows:

10-46B-11.1. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter is guilty of a Class 6 felony;
- (2) Fails to pay tax due under this chapter within thirty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these records to the secretary of revenue or his agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within thirty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business under this chapter without obtaining a contractor's excise tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business under this chapter after ~~his~~ the licensee's contractor's excise tax license has been revoked by the secretary of revenue is guilty of a ~~Class 6 felony~~ Class 1 misdemeanor;
- (7) ~~Violates either subdivision (2) or subdivision (4) two or more times in any twelve-month period is guilty of a Class 6 felony;~~
- (8) Engages in business under this chapter without obtaining a contractor's excise tax license after having been notified in writing by the secretary of revenue that the person is a contractor subject to the provisions of the contractors' excise tax laws is guilty of a ~~Class 6 felony~~ Class 1 misdemeanor. It is not a violation of this subdivision if the person engaging in business files an application for a contractor's excise tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section "person" includes corporate officers having control, supervision of or charged with the responsibility for making tax returns or payments pursuant to § 10-46B-11.

Section 5. That § 10-47B-187 be amended to read as follows:

10-47B-187. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter is guilty of a Class 6 felony;
- (2) Fails to pay tax due under this chapter within thirty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by this chapter or refuses to exhibit these records to the secretary or the secretary's agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within thirty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business as a licensee under this chapter without obtaining a fuel tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business as a licensee under this chapter after the licensee's fuel tax license has been revoked by the secretary is guilty of a ~~Class 6 felony~~ Class 1 misdemeanor;
- (7) Willfully violates any rule of the secretary for the administration and enforcement of the provisions of this chapter is guilty of a Class 1 misdemeanor;
- (8) ~~Violates either subdivision (2) or subdivision (4) of this section two or more times in any twelve-month period is guilty of a Class 6 felony;~~
- (9) Engages in the business of a licensee under this chapter without obtaining a fuel tax license after having been notified in writing by the secretary that the person is subject to the provisions of the motor fuel tax laws is guilty of a ~~Class 6 felony~~ Class 1

1 misdemeanor. It is not a violation of this subdivision if the person engaging in business
2 as a licensee files an application for a fuel tax license and meets all lawful prerequisites
3 for obtaining the license within three days from receipt of written notice from the
4 secretary;

5 (10) Makes false or deceptive statements in applying for a license issued pursuant to this
6 chapter or files an application as a subterfuge for the real person in interest whose
7 license has been canceled for cause by the secretary is guilty of a Class 6 felony;

8 (11) Ceases conducting business as a licensee as defined under this chapter and fails to
9 surrender a license to the secretary as required after discontinuance is guilty of a Class
10 1 misdemeanor;

11 (12) Knowingly submits a fraudulently prepared or supported claim for the refund of motor
12 or special fuel taxes is guilty of a Class 6 felony;

13 (13) Operates or maintains a motor vehicle in this state with special fuel that contains dye
14 as provided in this chapter in the engine fuel supply tank, is guilty of a Class 2
15 misdemeanor. Any subsequent violation is a Class 1 misdemeanor. Motor vehicles
16 owned by the state, a county or municipal corporation for the construction, repair and
17 maintenance of the public highways on any public highway and intercity buses as
18 defined by 26 U.S.C. § 6427(b) are not subject to this subdivision;

19 (14) Operates or maintains a motor vehicle which contains a product for use in the engine
20 fuel supply tank of the vehicle for general highway use that does not meet ASTM
21 standards as published in the annual book of standards and its supplements is guilty
22 of a misdemeanor. ~~Any subsequent violation is a Class 6 felony;~~

23 (15) Signs any form prescribed by the department with knowledge knowing that the form
24 contains false or untrue information, in whole or in part, is guilty of a ~~Class 6 felony~~
25 Class 1 misdemeanor;

(16) Fails to carry aboard a qualified motor vehicle, fuel use tax operating credentials required under this chapter or fails to exhibit such fuel use tax credentials if so required by a law enforcement officer is guilty of a Class 2 misdemeanor;

(17) Operates a motor vehicle with a capacity of more than four thousand two hundred gallons that is engaged in the shipment of motor fuel and special fuel on the public highways of this state without a bill-of-lading containing the information required by this chapter is guilty of a Class 1 misdemeanor;

(18) Sells a product for use in the engine fuel supply tank of a motor vehicle for general highway use that does not meet ASTM standards as published in the annual book of standards and its supplements is guilty of a ~~Class 6 felony~~ Class 1 misdemeanor. The department requires the possessor to dispose of any product in violation of this section in the manner provided by federal and state law.

Section 6. That § 10-58-10 be amended to read as follows:

10-58-10. Failure to comply with the licensing, registration or tax payment requirements of this chapter shall constitute a Class 1 misdemeanor for the first offense ~~and a Class 6 felony for any subsequent offense occurring within one year.~~

Section 7. That § 42-7B-30 be amended to read as follows:

42-7B-30. Any person who:

(1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter guilty of a Class 6 felony;

(2) Fails to pay tax due under this chapter within thirty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;

(3) Fails to file a return required by this chapter within thirty days from the date the return is due is guilty of a Class 1 misdemeanor;

~~(4) Violates either subdivision (2) or subdivision (3) two or more times in any~~

1 ~~twelve-month period is guilty of a Class 6 felony.~~

2 For purposes of this section "person" includes corporate officers having control,
3 supervision of or charged with the responsibility for making tax returns or payments pursuant
4 to this chapter.